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File No. O. Matadors/43

Legal Department-

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Opinions under the

Matackers Act 1887

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C O N T E N T S

Legal Department File No O. Mutadars/43

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Submitted.

The facts of the case are as follows:-

There are two Representative Matadars at Vatra taluka Board, the applicant Mr. Chakubhai Chhaganbhai being one of them. He was disqualified under section 30(1)(g) of the Matadars Act as he had committed an offence of dacoity when he was 18 years old in year 1922. In the year 1939, owing to the expiry of term of office of Mr. Prabhudas Dajibhai, who was appointed as Revenue and Police Patel of Vatra for a period of 10 years, a fresh appointment of Patel was to be made by the Prant Officer, Kaira, S.D. It was the turn in the family of Mr. Chakubhai but as he was disqualified he could not officiate in person or appoint a Deputy. The Prant Officer, Kaira, S.D. held proceeding for appointment of Patel at Vatra and meanwhile Mr. Chakubhai submitted an application to the Commissioner requesting that his disqualification might be removed. The Prant Office postponed the proceedings till the application of Mr. Chakubhai was decided by the Commissioner. The Commissioner N.D under his No. W.T.N. 2135 dated 25.6.39 refused the request ~~xxxxxxx~~ of Mr. Chakubhai and so the Prant Officer continued the proceedings. Mr. Chakubhai then applied to Government for removing his disqualification and requested the Prant Officer to stay the proceedings till the matter was decided by Government. As nothing was heard about his application from Government, the Prant Officer proceeded with the appointment. The Representative Matadar, Prabhudas Dajibhai, did not vote for any member of the Matadar family represented by Mr. Chakubhai and so the election under section 17 of the Matadars Act failed and the right to officiate as Patel vested in the Representative Matadar, Chakubhai. As Mr. Chakubhai was disqualified to hold the post and even to appointa deputy, the turn for the appointment of Police Patel passed into the family of Mr. Prabhudas Dajibahi according to thesettled order of rotation under section 22A of the Matadars Act.

Meanwhile on the applications of Chakubhai and village people of Vatra Government ordered the Commissioner to remove the disqualification of Mr.Chakubhai under their No.0/34280-F (Revenue Department) dated 9-10-1939 and accordingly the Commissioner under his order No.W.T.N. 2135 dated 27-10-39 passed orders for the removal of disqualificationof Mr. Chakubahi. Thereafter the Prant Officer, Kaira, S.D. submitted papers for Collector's orders recommending that the proceeding held by him on 15-7-39 and 24-7-39 about the appointment of Patel vice the disqualified Chakubhai might be cancelled, as the disqualification of Mr. Chakubhai was removed. Thereupon the Collector under his order No. W.T.N. 1354 dated 24.11.39 cancelled the said proceedings held by the Prant Officer and ordered him to hold fresh proceedings. The Prant Officer held fresh proceedings and at this time as the disqualification of Mr. Chakubhai was removed the Prant Officer appointed him as Revenue and Police Patel of Vatra for a period of 10 years under his order dated 29-12-39. Meanwhile, the Commr. N.D. inspetted the Collr's office and in the inspection notes observed that the Collector had no power to cancell the watan procedings held by the Prant Officer as this can only be done in exercise of the revisional powers under section 79 of the Bombay Hereditary Offices Act which vested in the Commissioner. Thereupon, the Callector submitted the papers to the Commissioner to regularise the order No.W.T.N. 1354 dated 24-11-39passed by the Collector

But the Commr. did not regularise the Collr's order and directed the Prant Officer should proceed with the old proceedings of 24th July 1939 which were ordered to be cancelled by the Collector. In view of the Commissioner's order, the appointment of Mr. Chakubhai made by the Prant Officer under his order dated 29th December 1939 was treated as null and void and the Prant Officer started with the old watan proceedings dated 24-7-39 and appointed Mr. Vaghjibahi Prabhudas, as Deputy Revenue and Police Patel of Vatra vice Parbhudas Dajibhai for a period of 10 years.

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In respect of the appointment as Revenue Patil section 79 of the Bombay Hereditary Offices Act, 1879, is operative by virtue of section 4 of the Matadars Act, 1887. Though the power to revise has been delegated by Government to the Commissioner under that provision, still Government is not divested of its revisional powers and consequently it would be competent for Government to revise the orders of the D.D.C. and the Commissioner. The appointment of the Matadar as Police Patil is regulated by the provisions of the Bombay Village Police Act, 1867 and the revisional order regularising it will have to be passed by Government under section 5(1) of that Act (see R.L.A.'s opinion No 7839, dated 26-10-1938). Secretary's proposal is in order.

Id/- P.N.M.

o.c. 7/8

Remembrancer of Legal Affairs

U.R. to R.D., No. 5411, dated the 9th August 1943.

Mjr 11/7

4 Cs.

Submitted.

Out of the five Matadars, four Matadars who were present voted for Mr. Parbhatsang Samatsang, the turn of whose family was to serve as the Revenue and Police Patel of Thamna Vento On 27th January 1936, the District Deputy Collector, Kaira, (S.D.) accordingly made an order appointing Mr. Parbhatsang Samatsang as Revenue and Police Patel of Thamna Vanto for a period of seven years with effect from 7th February 1936 , (see sections 17,18 and 24 of the Matadars Act, 1887). As a protest against the actions of Government, wounding the feelings of the people and imprisonment of leaders of the country, Mr. Parbhatsang tendered resignation of his office of Revenue and Police Patel to the Distric t Deputy Collector; Kaira, (S.D.), on 10th August 1942, and requested for its acceptance. He further stated that from that date he was no longer responsible as Patel and that arrangements should be made for the record on 15.8.1942. The papers do not disclose that any order was passed by the D.D.C. refusing to accept the resignation of Mr. Parabhatsang. It appears that Parbhatsang handed over the charge of his office and of the r ecord to the Talati of the village on 17.8.42 after office hours.

2. In pursuance of R.L.A's opinion No. 9355 dated 20th November 1942, a notice was issued upon Mr. Parbhatsang on 8th February 1943 asking him to present himself before the D.D.C. on 23rd February 1943 to show casue why action should not be taken against him for grave misconduct within the meaning of the second para. of section 31 of the Matadars Act, 1887. He failed to a ttend on the ground of his illness The matte r was, therefore fixed for hearing on 1st March 1943 and Mr. Parbhatsang was given due intimation of the s ame. As he failed to attend on the said date, a notice was issued. on 2-3-43 calling upon him to give his explanation in writing In his post card dated 9th March 1943, Parbhatsang stated that he tendered resignation of his office of Revenue and Police Patel because he could not attend to work on account of death of his wife and there being none to look after his children and the cultivation. He further stated that as he

did not participate in any political activity, the notice should be cancelled. This explanation was not accepted by the D.D.C. In his order dated 17th May 1943, the D.D.C. held that as Patel Parbhatsang submitted his resignation solely in sympathy with the present political movement, he committed a wilful breach of rule 30(1) of the Bom. C.S.C.D. and Appeal Rules which amounted to 'grave misconduct' within the meaning of section 31 of the Matadars Act, 1887 In view of the conclusion so reached, the D.D.C. directed that-

i) Parabhatsang should be removed from office of the Revenue and Police Patel of Thamna Vanto with effect from 17th August 1942 with the sanction of the Provincial Govt. under sec 31 of the Matadars Act, 1887 and sec. 9 of the Bombay village Police Act, 1867, and

(ii) the life interest in the Mata of Parbhatsang should be forfeited with the sanction of Government under sec. 31 of the Matadars Act, 1887.

3. The Commissioner, N.D. however, is of opinion that since Patel Partbhtsang has ceased to officiate from 17.8.1942 it is doubtful if he can now be said to have been removed from office from 17th August 1942 and if he is not removed from office para 4 sec 31 would not apply, and that the case under para 2 of section 31 he can be declared to be ineligible for re-employment without the sanction of Govt. The R.D. endorses the view of the Commr. N.D. and requests R.L.A. to advise whether the view is correct.

4. The first paragraph of sec. 31 of the Matadras Act, 18 7, enacts that any matadar who shall neglect or refuse to comply with any order made by the Collr. under sec. 11 and any matadar or officiator who shall be careless or negligent in the discharge of his duties may be punished by the Collr. for each such offence, by fine which may extend to one-forth of the annual emoluments of such matadar or officiator. The case of Mr. Parabhatsang would not fall within the scope of this provision since the facts do not disclose that Parabhatsang was either negligent or refused to comply with any order of the Collector made under section 11 or that he was careless or negligent in the discharge of his duties.

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The Matadar's term of office has come to an end either by resignation or by the expiry of the period of appoint-ent. On the facts of this case there is .o question of removal from office at this Stage. The correct order would be as proposed by the Commissioner, N.D.

Id/ P.N.M.

28/9

Remembrancer of Legal Affairs.

U.R. to R.D., No. 6569 , dated 29th September1943.

Mjr/10/7

4 Cs.

R.I.No. 9553
2-9-10-43

Submitted.

2. The facts of the case briefly are as follows:-

The posts of Revenue and Police Patels are separate at Dhanduka, the right to the office of Police Patel vesting exclusively in the family represented by Representative Matadar Suleman Admbhai, while the office of Revenue Patel is enjoyed by the families represented by representative Matadars (1) Suleman Admbhai, referred to above, and (2) Suleman Daud in succession for a period of 10 years, ~~xx~~ each. Suleman Adambhai has appointed his brother Ibrahim Adambhai as deputy Police Patel for his lifetime. On expiry of the term of office of representative Matadar Suleman Daud as Revenue Patel, the turn of Suleman Adambhai came and as other Matadar voted in his favour, the Assistant Collector, Dholka Prant issued a notice under section 21 of the Matadars Act, 1887, to nominate a fit person as his deputy within 20 days. There upon Suleman Adambhai nominated his brother Ibrahim, who was already working as Police Patel, as his deputy, Ibrahim, however, was not accepted as Deputy on the ground that the two offices of Police and Revenue Patels have long been separate and should not now be combined into one for admini. strative reasons. The Asstt. Collr. also ordered on 30th July 1942 that the turn to enjoy the right of the office passed on to the other R.M. Suleman Daud under section 21. Suleman Adam has now preferred an appeal to the Collector against this order of the Assistant Collector. The Collector considers that in view of the occurrence of the word "fit" in section 21, the Asstt. Collector must be deemed to have rejected the nominee as unfit for holding the post of Revenue Patel in view of his existing responsibilites as Police Patel. The Commissioner, N.D. holds that the Collector's view is not correct and states that in the absence of provisions analogous to section 45(g) of the Bombay Hereditary offices Act, 1874 in the Matadars Act (cf. section 3(1) of the , after Act), it cannot beheld that thenominee is unfit for the duties of Revenue Patel simply on the ground of

administrative expediency. R.D. concurs with this view and states that although on administrative grounds such combination in one and the same person in every alternate decade of the offices of a police and Revenue Patels should be avoided, there is no legal remedy to reject any officiator in any of the patelships. The R.L.A. is therefore requested to advise whether and. If so, how such combination of police and revenue patel ship can be avoided without infringing the provisions of the Matadars Act, 1887.

3. The view taken by the Commissioner, N.D. in para 3 of his endorsement No. U.T.N.2551, dated 17th Setpember 1943 at p 3 ante, appears to be correct. Section 21 of the Matadars Act, 1887 provides that when an appointment of a deputy has to be made by a representative matadar, the Collector shall by written notice require him to nominate a fit person to be his deputy within twenty days from the date of service of the said notice. The se cond para of this action provides that if the representative matadar fails, within the said period, to nominate any person, or if the person he nominates is not a member of a , matadar family of the same village, or is disqualified for office, the Collector may, in his discretion, extend the period of nomination for a further term of ten days . Para 3 provides that if within the prescribed period of twenty days, or when the Collector extends the period within the extended term, no person is nominated by the representative matadar or the person nominated by him is not a member of a matadar family of the same village, or is disqualified for office, the turn enjoy the right of office shall, pass tothe representative matadar or matadar family next in the settled order of rotation according as section 14 or section 15 applies to the village. A person is said to bedisqualified to hold the patel's office when he incurs any of the disqualifications mentioned in section 30(1) . In the present case the deputy nominated cannot be said to bedisqualified and must therefore be considered to be a fit person to hold the office. As section 36 to 59) of the watan Act do not apply to matadars (cf. section 3), the analogy stated in G.R.R.D. No. 2321 dated 6-3-1912 cannot be made applicable to matadars (cf. R.L.A's No. 5783 dated 15th July 1938.).

Office of the R.L.A.

R.D. observes at page 6 ante thus:-

"Occasions arise when one and the same man is entitled to officiate both as a Police Patil and Revenue Patil. Even though this is administratively undesirable, there is no legal remedy to reject such an officiator in any of the patilships in view of his right to serve under the Matadars Act, 1887. It is advisable to avoid such combined appointments, if this can bedone, without infringing the provisions of the Act." The R.L.A. is requested to advise whether, and if so how this can be done.

Section 19 of the Matadars Act, 1887, provides: "Every representative matadar in whom the right of office vests under section 14 of the 17 shall ordinarily be required by the Collector is he is not disqualified for office to officiate in person; but the Collector may, if he thinks fit, dispense with his personal service." Sub-section (1) of section 5 of the Bombay Village Police Act inter alia provides that the Provincial Government shall appoint the person conducting the duties of Revenue Patel to be Police Patel. Sub-section (2) provides that in making the appointment the Provincial Government shall have due regard to the provisions in force for regualting the services of hereditary officers so far as the same may be applicable. Reading these provisions together it appears that in cases where the right to office of both Revenue and Police Patel vests in one person, that person would be entitled to officiate both as Revenue and Police Patel. The administrative inconvenience or difficulty likely to be caused by one person officiating both as Revenue and Police Patel in a fairly big village is no valid ground for rejecting him for either office. Consequently under the Matadars Act as it stands it is not possible to avoid combined appointments. If R.D. considers that Government should have the power of rejecting a representative matadar for appointment either as Revenue or Police

Patel even though the right to both offices vests in him, the Matadars Act will have to be suitably amended.

Id/- P.N.M.

10/11

Remembrancerof Legal Affairs.

U.R. to R.D., No. 8329, dated the 11th November 1943.

Mjr/11/7

4 Cs.